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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 06 043 53145 Office: NEBRASKA SERVICE CENTER Date: JUN 13 2007

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Laura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence, most of which relates to accomplishments after the date the petition was filed. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Epidemiology and Health Statistics from Fudan University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, epidemiology, and that the proposed benefits of her work, understanding remedial risk factors for common causes of morbidity and mortality, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner received her Ph.D. from Fudan University in 2001. The petitioner then worked at the university as a lecturer through 2004. In 2004, the petitioner joined the laboratory of [redacted] at the Harvard School of Public Health. The petitioner also worked with [redacted] during this time. The petitioner then followed [redacted] to Northwestern University. [redacted] has also moved to Chicago and is currently the Director of the Center for Population Genetics at the University of Illinois at Chicago.

[redacted], the petitioner's supervisor at Fudan University, discusses her work at that institution. Specifically, the petitioner investigated (1) childhood obesity; (2) hypertension; (3) tolerance standards for water-soluble toxic heavy metal material content in crayons, watercolors and prepared ink for children and (4) the genetics of type 2 and gestational diabetes. [redacted] also discusses the petitioner's articles for a parenting magazine. Most of these articles relate to how to answer children's questions and other parenting strategies and do not relate to epidemiology. [redacted] further states that the petitioner "developed a primary cell culture of the fat cell in our laboratory, thus pioneering an important technique in studying obesity and diabetes." [redacted] also asserts that the petitioner performed an epidemiological study of "unapparent SARS infection in the Pudong district, researching the prevalence of SARS and its prevention and control in Shanghai." Finally, [redacted] asserts that the petitioner was either the principal investigator or a co-principal investigator for her studies between 2001 and 2003.

The petitioner authored 12 epidemiological articles in China, none of which appear to relate to SARS. The petitioner also lists eight book chapters authored while in China, two of which relate to SARS. The petitioner is not listed as an author of *Preventive Action Against SARS Handbook* although an editor purports to confirm her participation.[1] The other SARS publication appeared in a popular science publication and does not appear aimed at other scientists or to be designed to advance the field.

[redacted] asserts that the handbook was rushed out due to emergency circumstances and, therefore, no individual authors were listed.

While the petitioner was clearly a prolific author, it is incumbent on the petitioner to demonstrate the impact of her published articles and book chapters. The petitioner submits no evidence that any of her Chinese articles or book chapters have been cited or reported in the media. The record lacks letters from independent researchers or government officials who have relied on the petitioner's studies in their own research or to establish health or safety standards.

Regarding the petitioner's work in the United States, [redacted] states:

> Since she joined our research team, [the petitioner] has been working on multiple, cutting-edge projects involving important US public health problems: (1) Epidemiology of the Metabolic Syndrome in children – MS, a cluster of traits including obesity, hypertension, dyslipidemia, and hyperinsulinemia; (2) DDE [the major and stable metabolite of DDT], Endocrine Disruption, and Reproductive Outcomes; (3) Epidemiology of Food Allergy; and (4) the Genetic Epidemiology of Osteoporosis.

The only articles the petitioner had published as a member of [redacted]'s laboratory as of the date of filing are two articles on DDT/DDE. As noted by the director, the petitioner cannot credibly claim to have influenced the field with studies that had yet to be published as of the date of filing. *See also* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971) for the proposition that the alien must be eligible as of the priority date, in this matter the date of filing. Thus, we can only consider the petitioner's work on DDT/DDE and her published work in China. We note that even the petitioner's DDT/DDE articles were published almost immediately prior to the filing of the petition. Thus, it is difficult to gauge their impact as of that date.

[redacted] explains that DDE is an endocrine disrupter. According to [redacted] the petitioner was in charge of "data management and analysis, which is a critical component of the entire study." The petitioner examined the association of pre-pregnant plasma DDE concentration with menstrual disorders and found that DDT exposure is associated with earlier ages for menarche and the increased risk of experiencing a shortened menstrual cycle. [redacted], a coauthor of the petitioner's DDT/DDE studies, asserts that this work "is groundbreaking because it is leading to the awareness of environmental DDT or p,p'-DDE's [sic] contributions to the increasing prevalence of earlier puberty in children and adolescents and the effect that short menstrual cycles would have on women's reproductive and general health." [redacted] another coauthor, asserts that the petitioner "developed several novel and efficient statistical methods to deal with" the analytic challenges of these studies.

[redacted] another coauthor, discusses the petitioner's research on DDT and birth weight. [redacted] states:

> Much of the work we have done assessing relations of pesticides with reproductive health could not have been accomplished without [the petitioner's] substantial

> contributions particularly in regards to quantitative and analytic expertise that is otherwise not available. She and I collaborated on an assessment of the relation of maternal DDT exposure (a still prevalent environmental pesticide) with the risk of low birth weight. This was a complex analysis that would not have been possible without her considerable expertise. In fact, we had started this work before she joined our group but had made minimal progress until she took it on.

None of the petitioner's colleagues, however, explain how this work is being applied by other researchers or used in setting safety guidelines.

As noted by the director, the record lacks evidence that the petitioner has been widely cited. While the director asserts that the petitioner submitted no evidence of citation, the petitioner did submit a "Science Byte" on the Internet site www.environmentalhealthnews.org reviewing the petitioner's article on DDT and the menstrual cycle and evidence that this same article was cited as a "Work in Brief" in the same issue of *Occupational and Environmental Medicine* that carried the petitioner's article. The record lacks evidence as to the significance of coverage by Environmental Health News' website, such as how selections of which articles to summarize are made. Further, a summary in the same issue as the article itself does not bring the article to the attention of anyone who wouldn't otherwise see it. It remains, the record lacks evidence that the petitioner has been widely cited to a degree that would be consistent with an impact on the field as a whole.

On appeal, counsel relies on two non-precedent decisions by this office for the proposition that letters from independent experts should be accorded significant evidentiary weight. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding.

According to binding precedent, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are the most persuasive.

The petitioner submitted an independent opinion from [redacted] a research scientist with the Division of Environmental and Occupational Disease Control of the California Department of Health Services. [redacted] letter does not appear on official letterhead. Regardless, while [redacted] asserts that she read the petitioner's article on Serum DDT and the menstrual cycle "with great interest," she does not assert that she is applying the petitioner's work or that the California Department of Health Services is using this information to pursue additional research or set guidelines. [redacted] notes that the petitioner is listed as the first author of this article and that the research was funded by a research grant. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] a professor at the University of Maine, bases his opinion on a reading of an article by the petitioner that had been "tentatively accepted" by a journal and his prior awareness of her work in China. [redacted] however, provides no examples of the petitioner's work being applied in the field.

Finally, counsel asserts on appeal that the director erred in failing to consider that the petitioner had been requested to review a manuscript for publication. First, the request is dated after the date of filing and does not relate to the petitioner's eligibility as of that date. Regardless, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field. The petitioner has not explained how a single request to review a manuscript is indicative of her own impact and influence in the field.

The record shows that the petitioner is respected by her colleagues and has made useful contributions in her field of endeavor. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. At best, the petition was filed prematurely, before the impact of the petitioner's most significant work could be gauged.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.